

1  
2  
3  
4  
5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7

8 IN RE: TFT-LCD (FLAT PANEL) ANTITRUST  
9 LITIGATION

No. M 07-1827 SI  
MDL No. 1827

10 This Order Relates To:

No. C 11-3342 SI

11 ELECTROGRAPH SYSTEMS, INC., *et al.*,

12 Plaintiffs,

13 v.

14 NEC CORPORATION, *et al.*,

15 Defendants.  
16

**ORDER DENYING MOTION TO  
CERTIFY FOR INTERLOCUTORY  
REVIEW THE COURT'S ORDER  
DENYING IN PART NEC DEFENDANTS'  
MOTION TO DISMISS**

17 Defendants NEC Corporation, NEC LCD Technologies, Ltd., NEC Electronics America, Inc.,  
18 NEC Corporation of America, Inc., and NEC Display Solutions of America, Inc. (collectively, "NEC")  
19 have filed a motion to certify for interlocutory review this Court's order denying their motion to dismiss  
20 the complaint of plaintiffs Electrograph Systems, Inc., and Electrograph Technologies Corp. (together,  
21 "Electrograph"). Pursuant to Civil Local Rule 7-1(b), the Court finds this matter suitable for disposition  
22 without oral argument and therefore VACATES the hearing currently scheduled for March 16, 2012.  
23 Having considered the moving papers, and for good cause appearing, the Court hereby DENIES NEC's  
24 motion.

25 Certification of an interlocutory appeal is appropriate where an "order involves a controlling  
26 question of law as to which there is substantial ground for difference of opinion and . . . immediate  
27 appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C.  
28 § 1292(b). "Section 1292(b) is a departure from the normal rule that only final judgments are

1 appealable, and therefore must be construed narrowly.” *Robin James v. Price Stern Sloan, Inc.*, 283  
2 F.3d 1064, 1067 n.6 (9th Cir. 2002). The purpose of the section is to “facilitate disposition of the action  
3 by getting a final decision on a controlling legal issue sooner, rather than later” in order to “save the  
4 courts and the litigants unnecessary trouble and expense.” *United States v. Adam Bros. Farming, Inc.*,  
5 369 F. Supp. 2d 1180, 1182 (C.D. Cal. 2004).

6 The Court concludes that immediate appeal would not “materially advance the ultimate  
7 termination of the litigation.” Even accepting the unlikely proposition that the Court would stay this  
8 action pending appeal, NEC is also a defendant in at least eight other cases in this MDL. Given these  
9 parallel proceedings, immediate appeal would save NEC little trouble or expense. Nor is it clear to the  
10 Court that a ruling in NEC’s favor would necessarily “eliminate” NEC from these lawsuits. *See* Motion  
11 at 20. NEC cites to no authority, for example, suggesting that Electrograph would be prohibited from  
12 amending its complaint to include any facts it discovers during the pendency of NEC’s appeal.

13 Given that NEC’s motion to dismiss was based upon its contention that Electrograph’s complaint  
14 lacked adequate factual support, the Court concludes that interlocutory review is not warranted. Rather,  
15 NEC’s arguments are better addressed on summary judgment. Accordingly, NEC’s request for  
16 certification of an interlocutory appeal is DENIED.

### 18 CONCLUSION

19 For the foregoing reasons and for good cause shown, the Court hereby DENIES NEC’s motion  
20 to certify for interlocutory review. Docket No. 49 in 11-3342; Docket No. 4800 in 07-1827.

21  
22 **IT IS SO ORDERED.**

23  
24 Dated: March 14, 2012

25   
26 \_\_\_\_\_  
27 SUSAN ILLSTON  
28 United States District Judge